

REMARKS

The above-identified application has been considered in view of the Final Office Action that was mailed on August 13, 2008. Claims 12-17, 19-21, 23-25, and 32-38 are currently pending. By the present Amendment, the Applicant has amended independent claims 12, 19, and 34, and added new claims 36-38 for consideration. Applicant respectfully submits these amendments do not introduce any new matter and are fully supported by the specification. In view of the amendments and the following remarks and arguments, the Applicant respectfully submits that the pending claims are allowable over the references of record.

Claims 12-16, 19, 20, 24, 25, 32, and 33 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,555,242 to Saudagar (hereinafter “Saudagar”). Applicant respectfully submits, however, that Saudagar fails to disclose each and every element recited in claims 12-16, 19, 20, 24, 25, 32, and 33 as presented herein.

As amended, independent claims 12 and 19 each recite an elongate tubular member having a plurality of wall segments disposed thereon, wherein at least two wall segments are “in an abutting relationship along the longitudinal axis of the elongate tubular member when in the uninflated state” and “each wall segment in the plurality of wall segments defining a discrete internal space.”

Saudagar discloses a drainage appliance 10 with a tube 12 and an inflatable balloon 28 formed around the tube 12. (See col. 3, lines 41-53; see FIGS. 1-2). The balloon 28 includes a tubular portion with a plurality of circumferential ribs or corrugations 30. (See col. 4, lines 6-8).

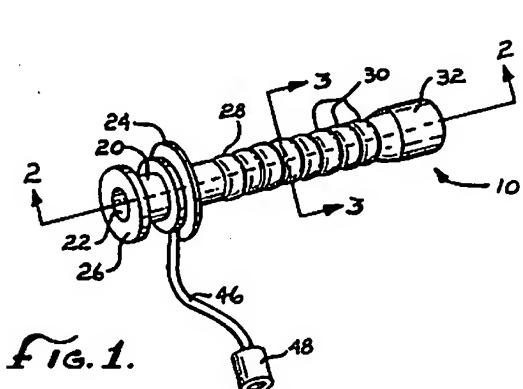


FIG. 1.

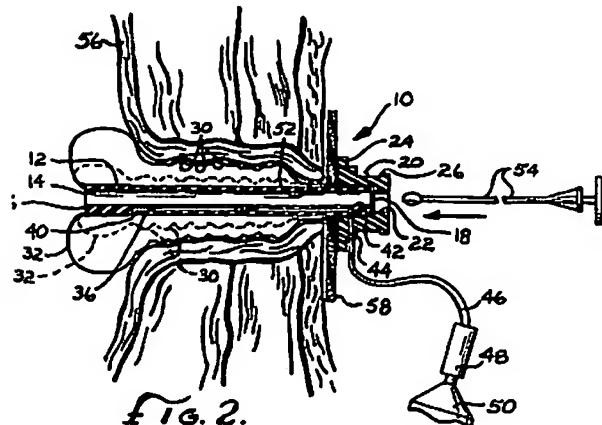


FIG. 2.

The Final Office Action offered two separate interpretations of the drainage appliance 10 discussed in Saudagar. First, the corrugations 30 were characterized as the “plurality of wall segments” recited in the claims, and it was asserted that the “plurality of wall segments” includes at least two wall segments in an abutting relationship. Alternatively, it was argued that “the wall of the inflatable portion (28) can be considered to comprise a plurality of wall segments in abutting contact.”

With respect to the first interpretation, as previously argued in an Amendment dated May 13, 2008, Applicant respectfully submits that the corrugations 30 do not constitute or define individual, separate wall segments, but rather, that the corrugations 30 are merely indentations or depressions formed on the single inflatable balloon 28 disclosed in Saudagar.

Accordingly, Applicant respectfully submits that Saudagar fails to disclose a surgical device that includes an elongate tubular member and “a plurality of wall segments disposed on said tubular member,” as recited in amended independent claims 12 and 19, disclosing instead only a single inflatable balloon. Thus, the Applicant further submits that Saudagar also fails to disclose “at least two wall segments in an abutting relationship when in the uninflated state” as also recited in amended independent claims 12 and 19.

Regarding the second interpretation, even if the wall of the inflatable balloon 28 could be properly said to include a plurality of wall segments in abutting contact, the so-called “plurality of wall segments” would act cooperatively to define a single internal space.

Accordingly, Applicant respectfully submits that Saudagar fails to disclose a surgical device that includes “a plurality of wall segments . . . each wall segment in the plurality of wall segments defining a discrete internal space,” as also recited in amended independent claims 12 and 19.

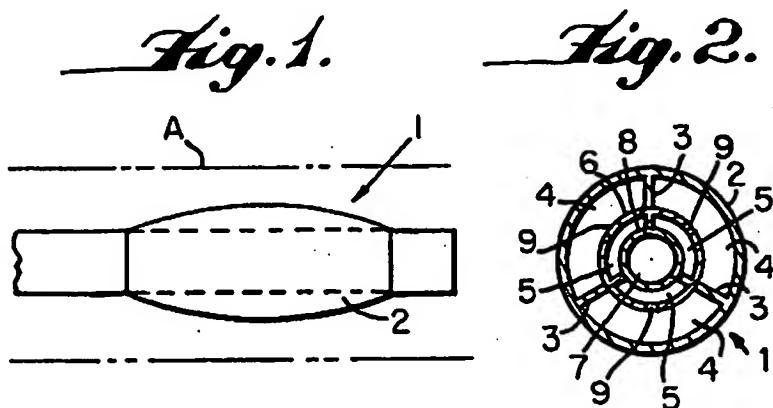
For at least these reasons, *inter alia*, Applicant respectfully submits that Saudagar fails to disclose each and every element recited in amended independent claims 12 and 19, and therefore, that amended independent claims 12 and 19 are allowable over Saudagar under 35 U.S.C. §102(b). As claims 13-16, 20, 24, 25, 32, and 33 depend either directly or indirectly from amended independent claims 12 and 19 and include each element recited therein, for at least the reasons that amended independent claims 12 and 19 are allowable over Saudagar under 35 U.S.C. §102(b), *inter alia*, Applicant respectfully submits that claims 13-16, 20, 24, 25, 32, and 33 are also allowable over Saudagar under 35 U.S.C. §102(b).

Claims 12, 13, 16, 17, 19-21, 24, 25, and 34-36 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,308,323 to Sogawa *et al.* (hereinafter “Sogawa”). Applicant respectfully submits, however, that Sogawa fails to disclose each and every element recited in claims 12, 13, 16, 17, 19-21, 24, 25, and 34-36 as presented herein.

As amended, independent claim 34 recites a surgical device that includes “an elongate tubular member defining a passage therethrough such that an operating tool is extendable beyond an open distal end of the elongate tubular member” and “a plurality of selectively inflatable wall segments” wherein “the plurality of wall segments includes at least two wall segments in an

abutting relationship along a longitudinal axis of the elongate tubular member, each wall segment in the plurality of wall segments defining a discrete internal space."

Sogawa discloses a catheter 1 including a balloon 2 used to occlude a vessel, e.g., a blood vessel. The balloon 2 includes several internal compartments 4 divided by radial walls 3.



In the Final Office Action, the radial walls 3 were characterized as the “plurality of wall segments” recited in independent claims 12, 19, and 34. Additionally, in response to Applicant’s argument submitted in the Amendment dated May 13, 2008 that the balloon 2 is the only inflatable member of the Sogawa catheter, and that the radial walls 3 merely serve to divide the balloon 2 into several internal compartments, it was argued in the Final Office Action that “a single balloon can be considered to be made of a plurality of inflatable wall segments in abutting contact.”

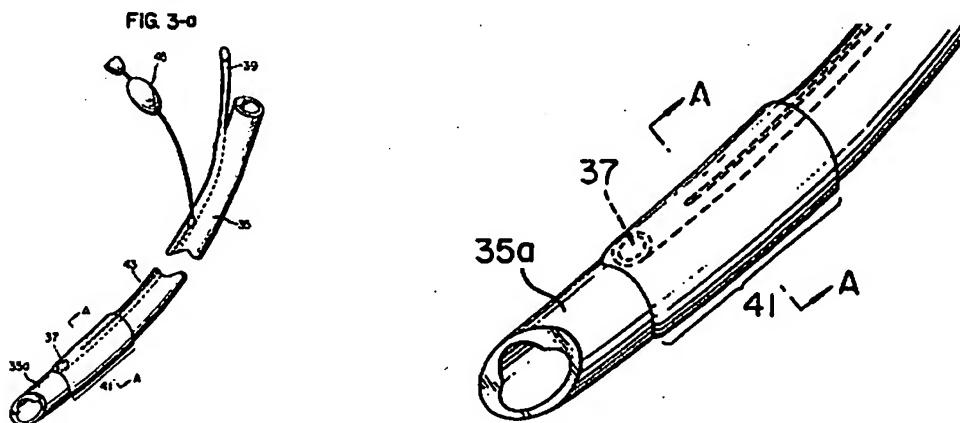
Even if it is assumed, *arguendo*, that Sogawa's balloon 2 and the radial walls 3 positioned therein could be collectively characterized as a "plurality of wall segments," as seen above in FIG. 1, the "plurality of wall segments" are positioned circumferentially about the catheter 1 in side-by-side relation, and it cannot properly be said that the "plurality of wall segments" extend along the length of the catheter 1. In contrast, amended independent claims

12, 19, and 34 each recite a plurality of wall segments including “at least two wall segments in an abutting relationship along a longitudinal axis of the elongate tubular member.”

Accordingly, and for at least these reason, *inter alia*, Applicant respectfully submits that Sogawa fails to disclose each and every element recited in amended independent claims 12, 19, and 34, and therefore, that amended independent claims 12, 19, and 34 are allowable over Sogawa under 35 U.S.C. §102(b). As claims 13, 16, 17, 20, 21, 24, 25, 35, and 36 depend either directly or indirectly from amended independent claims 12, 19, and 34 and include each element recited therein, for at least the reasons that amended independent claims 12, 19, and 34 are allowable over Sogawa under 35 U.S.C. §102(b), *inter alia*, Applicant respectfully submits that claims 13, 16, 17, 20, 21, 24, 25, 35, and 36 are also allowable over Sogawa under 35 U.S.C. §102(b).

Claims 12-16, 19, 20, and 23-25 were rejected under 35 U.S.C. §102 (b) as being anticipated by U.S. Patent No. 4,453,545 to Inoue (hereinafter “Inoue”). Applicant respectfully submits, however, that Inoue fails to disclose each and every element recited in claims 12-16, 19, 20, and 23-25 as presented herein.

Inoue discloses an endotracheal tube 35 including a cuff 41 near an end 35a thereof that is inflatable through blowing means 45. (See col. 3, lines 12-21; see FIG. 3-a).



In the Final Office Action, it was argued that "the inflatable cuff (41) . . . can be considered to be made up of a plurality of wall segments which are joined together to form the entire cuff" and that "[t]wo segments next to each other are in an abutting relationship."

With reference to FIG. 3-a of Inoue reproduced above, and the corresponding enlargement, Applicant maintains the position taken in the Amendment dated May 13, 2008 that the cuff 41 constitutes a single inflatable element only, in contrast to the "plurality of wall segments" recited in independent claims 12 and 19 and seen below in FIG. 35.

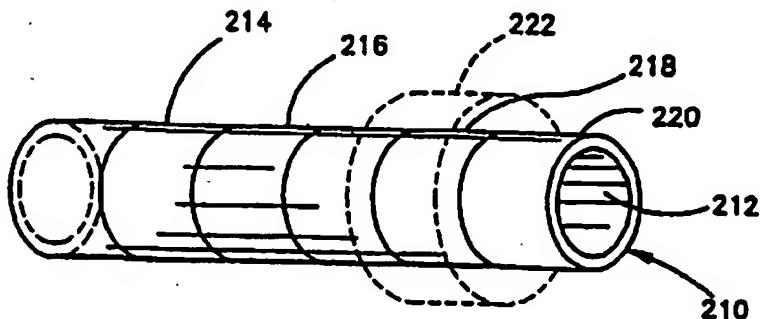


Fig.35

Additionally, referring again to FIG. 3-a of Inoue, even if the inflatable cuff 41 could be properly characterized as including a plurality of attached wall segments, the cuff 41 itself defines a single internal chamber. In contrast, as seen above in FIG. 35, the "plurality of wall segments" recited in amended independent claims 12 and 19 each define "a discrete internal space."

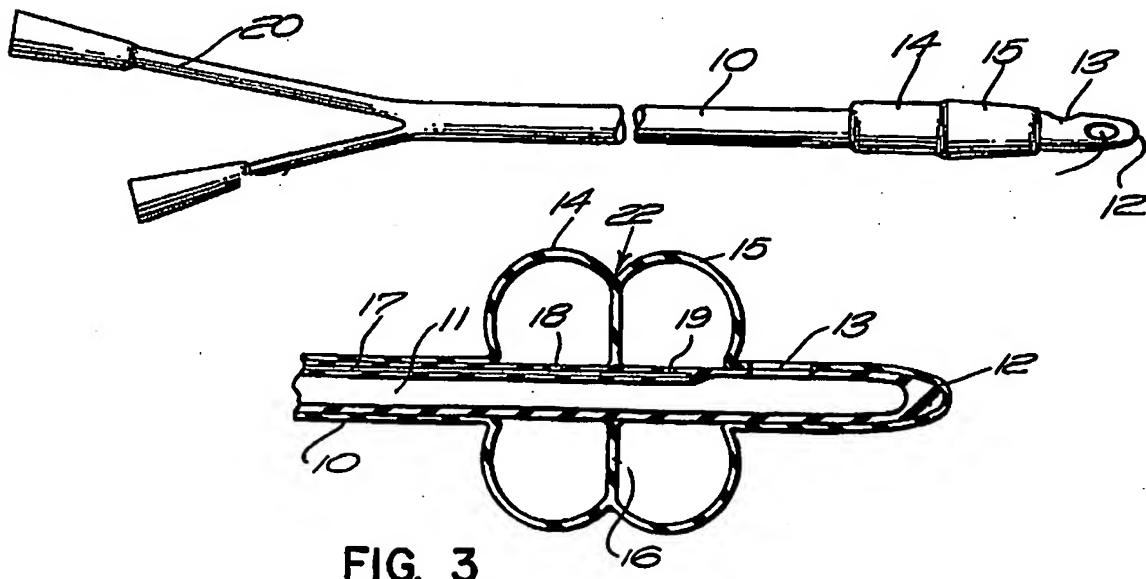
For at least these reasons, *inter alia*, Applicant respectfully submits that Inoue fails to disclose each and every element recited in amended independent claims 12 and 19, and therefore, that amended independent claims 12 and 19 are allowable over Inoue under 35 U.S.C. §102(b). As claims 13-16, 20, and 23-25 depend either directly or indirectly from amended independent claims 12 and 19 and include each element recited therein, for at least the reasons that amended

independent claims 12 and 19 are allowable over Inoue under 35 U.S.C. §102(b), *inter alia*,

Applicant respectfully submits that claims 13-16, 20, and 23-25 are also allowable over Inoue under 35 U.S.C. §102(b).

Claims 34-36 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 2,849,001 to Oddo (hereinafter “Oddo ‘001”) in view of U.S. Patent No. 2,849,002 to Oddo (hereinafter “Oddo ‘002”). Applicant respectfully submits, however, that the combination of Oddo ‘001 and Oddo ‘002 fails to suggest each and every element recited in claims 34-36 as presented herein.

Oddo ‘001 describes a catheter including a tubular body portion 10 defining a central drainage channel 11. The body portion 10 includes one or more openings 13 adjacent a distal end 12 that communicate with the channel 11. The catheter further includes two inflatable balloons 14, 15 integrally mounted on the body portion 10.



In the Final Office Action, the tubular body portion 10, the drainage channel 11, and the

inflatable balloons 14, 15 were respectively characterized as the “elongate tubular member,” the “passage” extending through the “elongate tubular member,” and the “inflatable wall segments” recited in independent claim 34, and it was argued that the drainage channel 11 “is configured to removably receive an operating tool (such as a guidewire).” Additionally, it was argued that the openings 13 included at the distal end 12 of the body portion 10 are “formed near enough to the distal tip of the device . . . that the passage within the tubular portion can be considered to be formed ‘therethrough’.” It was acknowledged, however, that Oddo ‘001 fails to disclose balloons that are selectively inflatable, and Oddo ‘002 was relied upon for disclosure of this concept.

Despite the contention offered in the Final Office Action that the drainage channel 11 can be considered as extending through the body portion 10 given the presence of the openings 13, Oddo ‘001 specifically states that the central drainage channel 11 “is closed at the distal end,” as seen above in FIGS. 2-3. In contrast, the “elongate tubular member” recited in amended independent claim 34 includes “an open distal end,” as seen below in FIG. 35.

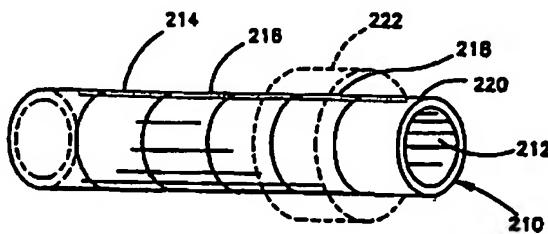


Fig.35

As the Oddo ‘001 catheter includes a closed distal end, Applicant maintains the position taken in the Amendment dated May 13, 2008 that the channel 11 does not extend through the tubular body portion 10, but rather, merely within the body portion 10, and respectfully submits that Oddo ‘001 fails to disclose a surgical device that includes “an elongate tubular member

defining a passage therethrough such that an operating tool is extendable beyond an open distal end of the elongate tubular member," as recited in amended independent claim 34. Assuming, *arguendo*, that the Examiner's characterization of Oddo '002 is accurate, including the selectively inflatable balloons purportedly disclosed therein would fail to cure this deficiency.

Accordingly, and for at least this reason, *inter alia*, Applicant respectfully submits that the combination of Oddo '001 and Oddo '002 fails to suggest each and every element recited in amended independent claim 34, and therefore, that amended independent claim 34 is allowable over Oddo '001 in view of Oddo '002 under 35 U.S.C. §103(a). As claims 35-36 depend either directly or indirectly from amended independent claim 34 and include each element recited therein, for at least the reasons that amended independent claim 34 is allowable over Oddo '001 in view of Oddo '002 under 35 U.S.C. §103(a), *inter alia*, Applicant respectfully submits that claims 35-36 are also allowable over Oddo '001 in view of Oddo '002 under 35 U.S.C. §103(a).

New claims 37 and 38 have been added for consideration. As set forth above, amended independent claim 12 is allowable. Given the dependence of new claims 37 and 38 directly from amended independent claim 12, for at least the reasons that amended independent claim 12 is allowable, *inter alia*, Applicant respectfully submits that new claims 37 and 38 are also allowable.

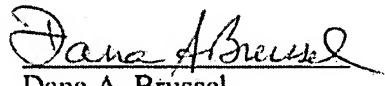
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Response to Final Office Action
mailed August 13, 2008

In view of the amendments to the claims effected herein, and the foregoing remarks and arguments, Applicant respectfully submits that the above-identified application is in condition for allowance. Should the Examiner feel that an interview would facilitate the resolution of any outstanding matters, the Examiner is sincerely invited to contact the undersigned at (631) 501-5713.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. §1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550 therefore.

Respectfully submitted,


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